



April 4, 2011

**Via Electronic Submission**

Ms. Elizabeth Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Comment Letter on Release No. 34-63825 Relating to Registration  
and Regulation of Security-Based Swap Execution Facilities;  
File No. S7-06-11; 76 FR 10948 (February 28, 2011)

Dear Ms. Murphy:

Chicago Board Options Exchange, Incorporated ("CBOE") appreciates the opportunity to provide its comments to the Securities and Exchange Commission ("SEC") with respect to the SEC's proposals in the above-referenced release ("Release"). The Release proposes to implement certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") by setting forth proposed requirements applicable to security-based swap execution facilities ("SB SEFs"). Because CBOE is a national securities exchange, CBOE's comments in this letter are directed to how the proposed requirements for SB SEFs inter-relate with the requirements for exchanges. CBOE's affiliate C2 Options Exchange, Incorporated also concurs with these comments.

**The Same or Equivalent Requirements Should Apply to SB SEFs and Exchanges**

CBOE supports the SEC's approach in the Release of applying many of the same or equivalent requirements to SB SEFs as are applicable to exchanges. However, in those instances in which the SEC is not applying the same or equivalent requirements to both SB SEFs and exchanges, CBOE strongly believes that the SEC should do so. CBOE is not suggesting that this needs to be done by applying to SB SEFs the requirements that are applicable to exchanges. This may also be accomplished by applying to exchanges the requirements that are proposed to be applicable to SB SEFs.

The Dodd-Frank Act contemplates that both exchanges and SB SEFs may list security-based swaps ("SB swaps") and thus compete with one another. Accordingly, it is crucial that there be a level playing field between both exchanges and SB SEFs and that there be no regulatory disparities that would make it more advantageous to list an SB swap on an SB SEF as opposed to an exchange. Otherwise, the result will be regulatory arbitrage and the goal of promoting competition between exchanges and SB SEFs will not be realized.

Moreover, it is consistent with the public interest and the underlying intent of the Dodd-Frank Act to facilitate the trading of SB swaps on fully regulated exchanges. To the extent that it is easier to trade SB swaps on an SB SEF than an exchange due to less stringent requirements imposed on SB SEFs, trading in SB swaps will migrate to the lesser-regulated SB SEF trading

venues.

As the SEC recognizes in the Release, both SB SEFs and exchanges that post or trade security-based swaps are intended to play an important role in enhancing the transparency and oversight of the market for SB swaps. If exchanges are restricted in their ability to compete for trading volume in SB swaps because they are subject to more stringent requirements, exchanges will be inhibited from serving this important role.

Exchanges Should Be Permitted to Offer Trading in SB Swaps in the Same Manner that SB SEFs May Do So

A key area in which it is vitally important to apply the same requirements to SB SEFs and exchanges is with respect to trade execution. CBOE is not suggesting that products traded on an exchange which may not be traded on an SB SEF should be subject to the same trade execution requirements as those applicable to an SB SEF. Instead, CBOE believes that an exchange should be able to offer trading in SB swaps on its market in the same manner that an SB SEF may do so. For example, CBOE should be permitted to have a separate rule chapter that governs trading in SB swaps which contains trade execution requirements that are consistent with the SB SEF trade execution requirements while at the same time adhering to whatever trade execution standards may be required by the SEC for CBOE's other products.

It is inefficient and would be form over substance to require an exchange to create a separate SB SEF in order to offer trading in SB swaps in the same manner that an SB SEF can do so instead of just permitting the exchange to adopt a separate rule chapter for the trading of SB swaps on the exchange consistent with the SB SEF trade execution requirements. An exchange should not have to create a separate entity, board, board committees, membership application and approval process, complete rule set, and all of the many overlapping processes, policies, and procedures that are required for SB SEFs when an exchange already has all of these components in place and can simply add any incremental additional required components for SB swaps. Such an approach, if it is what the SEC intends, is burdensome, costly, without regulatory purpose, and unnecessary.

SB SEFs and Exchanges Should Be Subject to the Same Rule Filing Process for SB Swaps and SB Swap Rules

Another area in which it is critically important to apply the same requirements to SB SEFs and exchanges is with respect to rule filing requirements. CBOE has previously urged the SEC to adopt a process for handling exchange rule changes that resembles the Commodity Futures Trading Commission ("CFTC") rule certification process for futures exchanges. CBOE continues to call upon the SEC to adopt this approach for exchange rule filings in order to eliminate the delays, arbitrary review standards, and resulting competitive disadvantages to exchanges that exist as part of the current SEC rule filing process. Accordingly, CBOE supports the SEC's application to SB SEFs of the updated rule certification process that has been proposed by the CFTC, but only if the SEC makes this same process applicable with regard to exchange rules that relate to or facilitate the trading of SB swaps. Otherwise, exchanges will be at a significant competitive disadvantage to SB SEFs in providing a venue for trading SB swaps.

For example, there is no regulatory or other justification for permitting an SB SEF to self-certify an SB swap for trading on the SB SEF under proposed Rule 807 and to begin trading the SB swap the next business day when an exchange is required to go through a much more lengthy rule filing and approval process in order to offer trading in exactly the same SB swap. Under

such an approach, it is even the case that an SB SEF could have no intention of offering trading in an SB swap, see an exchange rule filing to do so, decide it is a good idea, self-certify the product, and list the SB swap on its market the next business day well before the exchange is permitted to do so. Correspondingly, SB SEFs should not be permitted to self-certify rules related to SB swaps under proposed Rule 806 and have those rules become automatically effective in ten business days when exchanges must undergo an approval process and wait a much longer period in order to implement exchange rules relating to SB swaps. Such an outcome is inequitable to exchanges and would provide SB SEFs with a substantial advantage over exchanges that offer trading in SB swaps by allowing SB SEFs to come to market much sooner than exchanges with SB swap products and SB swap trading innovations.

The SEC Should Have the Same or Equivalent Requirements for SB SEFs as the CFTC Will Have for Swap Execution Facilities Under Its Jurisdiction ("SEFs")

In addition to applying the same or equivalent requirements to both SB SEFs and exchanges, the SEC should apply the same or equivalent requirements to SB SEFs as the CFTC will be applying to SEFs. To the extent that parties wish to form swap execution facilities that will function as both a SEF and an SB SEF, it is important that the requirements for both be consistent. Having different requirements which do not permit swap execution facilities to utilize the same trading structures, rules, and operational procedures in relation to SB swaps and other swaps is inefficient, costly, and confusing to market participants. Doing so also significantly exacerbates and increases these costs and inefficiencies to the extent that it necessitates from a practical standpoint that parties form and operate separate entities and trading platforms in order to function as both a SEF and an SB SEF.

Applying the same or equivalent requirements to both SEFs and SB SEFs is consistent with the intent of the Dodd-Frank Act. Specifically, Section 712(a)(2) of the Dodd-Frank Act requires that the SEC consult and coordinate to the extent possible with the CFTC for the purposes of assuring regulatory consistency and comparability to the extent possible with respect to, among other things, SB SEFs and SEFs. Similarly, Section 712(a)(7) of the Dodd-Frank Act requires in this context that the SEC and CFTC treat functionally or economically similar products or entities in a similar manner. Additionally, for the reasons set forth above, it is also important that consistency of treatment of SEFs and SB SEFs be coupled with, and not be to the detriment of, applying the same or equivalent requirements to SB SEFs and exchanges.

The Standard for When an SB Swap Is Considered "Made Available for Trading" Should Not Be Based on the Amount of Trading in that SB Swap on Exchanges and SB SEFs

The SEC states in the Release that it anticipates that it will separately address how to determine when a particular SB swap would be considered to be "made available for trading" on an exchange or SB SEF and solicits comments on how the SEC should craft an objective standard for making this determination. CBOE believes that whatever standard the SEC adopts in this regard should not be based upon whether market participants choose to trade in a particular SB swap on exchanges and SB SEFs. Market participants in the SB swaps market may have an incentive not to transact in SB swaps on exchanges and SB SEFs in order to avoid the additional transparency and oversight that exchanges and SB SEFs will bring to that market. Allowing those market participants to essentially negate the statutory requirement to transact in cleared SB swaps on exchanges and SB SEFs by simply collectively choosing not to trade in SB swaps on those venues would thwart the intent of the Dodd-Frank Act. Specifically, adopting a standard that leads to this result would frustrate the goal of the Dodd-Frank Act to have transactions in cleared SB swaps occur on exchanges and SB SEFs and thus to provide for greater transparency

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and a more competitive environment for the trading of SB swaps. For these reasons, CBOE opposes in particular the possible standard noted by the SEC in the Release that would look to the percentage of trading in a particular SB swap that is taking place on exchanges and SB SEFs in comparison to the aggregate percentage of trading taking place in that SB swap on those venues and in the over-the-counter market.

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CBOE is available to provide any further input desired by the SEC regarding these issues and to work cooperatively with the SEC to address them. Please contact Joanne Moffic-Silver, General Counsel, at (312) 786-7462, or me, at (312) 786-7570, if you have any questions regarding our comments.

Very truly yours,

A handwritten signature in blue ink that reads "Arthur B. Reinstein". The signature is written in a cursive style with a large initial "A".

Arthur B. Reinstein  
Deputy General Counsel